

Photo: ArcelorMittal SA's plant in Vanderbijl Park in the Vaal Triangle

economic  
justice  
resisting  
neoliberalism

# rules for business rights for peoples

october 2016

**Africa**

# TIME FOR JUSTICE

The biggest companies in the world are often implicated in human rights violations. Yet many of their crimes go unpunished. Since the killing of Ken Saro-Wiwa and eight activists on November 10 1995 for daring to challenge Shell in Nigeria, over 5,000 other Ogonis have died in repressive military actions and violent oil-related conflicts. Transnational corporations (TNCs) like Shell, Chevron, Eni and Total have been operating in the Niger Delta with impunity for decades. The issue is systemic and with severe impacts on people and the planet!



Photo: Godwin Ojo, FOE Nigeria, at the United Nations

**6,817 OIL SPILLS RECORDED = 500,000 BARRELS ANNUALLY**

(1 VALDEZ PER YEAR)

**1.8 BILLION CUBIC FEET OF GAS FLARED DAILY = 45.8 BILLION KW OF HEAT RELEASED INTO THE ATMOSPHERE**

**BENZENE IN DRINKING WATER = 900 TIMES ABOVE WHO STANDARDS**

(UNEP'S OGONI ENVIRONMENTAL ASSESSMENT REPORT)

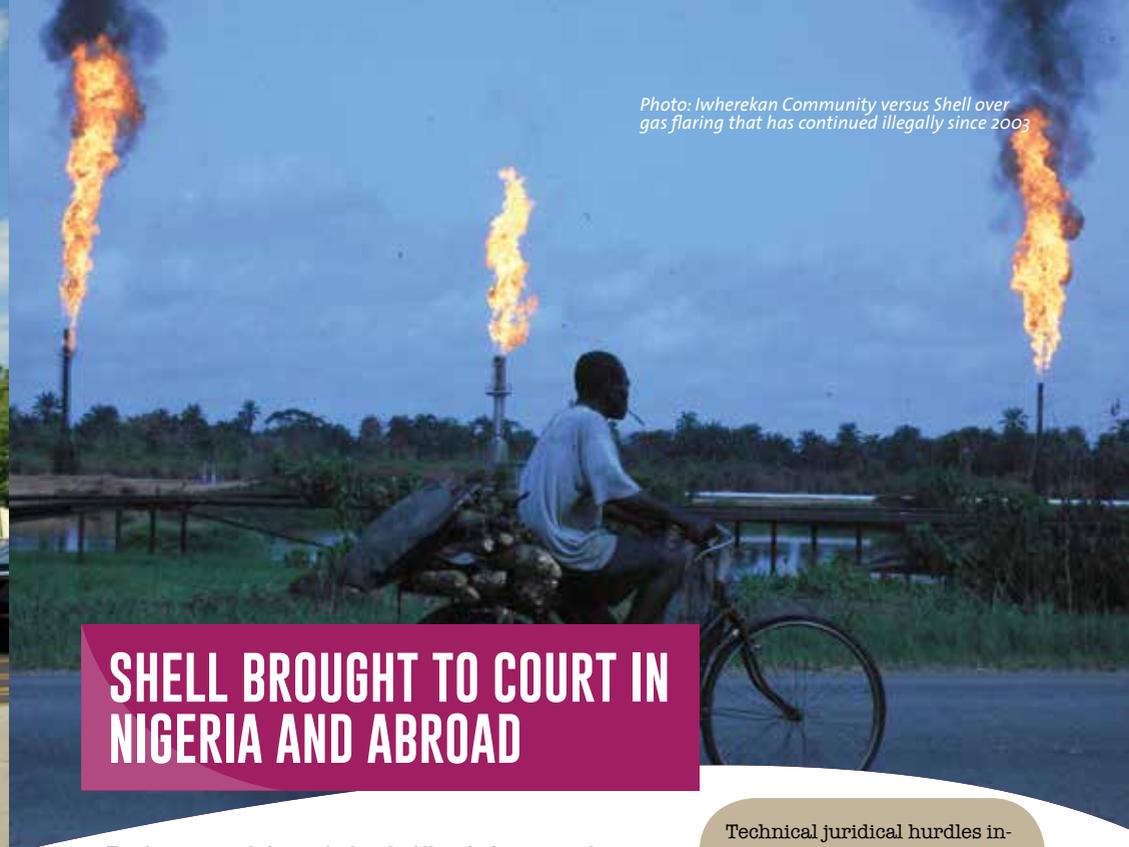
## ▲ THE CUMULATIVE IMPACTS OF OIL GIANTS ON NIGER DELTA: BETWEEN 1976-2001

Since 2014 a historic UN process has been unfolding at the Human Rights Council (UNHRC) to enforce new binding rules on business and bring justice to thousands of victims. At the 1<sup>st</sup> session of the Inter Governmental Working Group (IGWG) in 2015, UN member countries worked on the scope, content and form of this new Human Rights treaty. From 24 to 28 October 2016 the IGWG will hold its 2<sup>nd</sup> session in Geneva, supported and monitored by an alliance of civil society and social movements representing countries and communities affected by TNCs.



Friends of the Earth International

Photo: Iwherakan Community versus Shell over gas flaring that has continued illegally since 2003



## SHELL BROUGHT TO COURT IN NIGERIA AND ABROAD

Environmental degradation in Nigeria is systemic, affecting hundreds of people and their environment. Yet the lack of access to justice ensures that this warped status quo is maintained.

Four fishermen from the Niger Delta versus Shell in which the fishermen are seeking compensation for the loss of their fishing ponds and therefore livelihoods as a result of Shell oil spills and Shell's failure to provide preventive measures: Since 2008 Shell has used delaying tactics by raising objections on jurisdiction. In December 2015 the International Criminal Court in the Hague ruled that the company has a case to answer over its human rights violations in Nigeria.

Ekeremor Zion versus Shell in which 12 years of legal battles over oil spills that destroyed local farmlands ended in compensation of about N30 million (US\$200,000). Shell refused to pay and appealed in 1997. The judgment was delayed for a total of 30 years.

To seek environmental justice, ERA/Friends of the Earth Nigeria along with its allies instigated court cases working with communities within and outside Nigeria.

**“National laws and court systems are hardly independent and also not respected by transnational oil companies, like Shell. Justice delayed is justice denied. Hence the need for a world environmental court that can dispense cases in a timely fashion and with enforcement mechanisms established by a UN binding Treaty.” Godwin Ojo, Director of Earth Rights Action (ERA) - Friends of the Earth Nigeria**

Technical juridical hurdles include: the high cost of litigation, the problem of locus standi or “right to sue”, *sleeping on your right* (non-enforcement of rights within a stipulated period which is usually short and works to the advantage of oil companies)<sup>2</sup>, preponderance of the burden of proof or evidence placed on the victims.

Photo: Brickmaker affected by Vale in Tete.



## VALE: ACCESS TO JUSTICE DENIED IN MOZAMBIQUE

Since 2011 Vale's Moatize coal project has negatively impacted the communities of the Tete Province, by forcibly displacing 1,365 families to make way for mining operations and directly polluting soil and water sources.<sup>3</sup>

The company has not upheld its promises to provide decent relocation opportunities for affected families and people. Small-scale farmers have been unable to cultivate their lands. A claim presented by the association of brickmakers was denied. Other lawsuits brought by NGOs and law groups end up stuck in courts. A decision has yet to be made in relation to the urgent precarious situation of these communities.

Meanwhile the company is allowed to continue its operations undisturbed, while community protests are handled with violence by both the company and the police.

***"We cannot expect the legal system of our country alone to face the impunity of transnational corporations and provide access to justice and reparations to their victims" Daniel Ribeiro, JA! - Friends of the Earth Mozambique***

Photo: Children on the street in Cateme, Vale resettlement village



## JINDAL: STATE DOES NOT GUARANTEE NO REPETITION OF VIOLATIONS

To date more than 500 families from the Cassoca, Luane, Cassica, Dzindza and Gulu communities have been either displaced or affected by pollution directly resulting from this company's activities. From those, 289 families are still living inside the mine concession.<sup>3</sup>

Through the direct effects of its operation, through the security companies hired by Jindal or through the national police working to protect the company's assets, the following human rights have been violated: loss of food sovereignty, access to land and the right to housing, access to public health, freedom of speech and freedom of movement, disrespect of the environmental law.

States have a fundamental obligation to guarantee no repetition of violations to victims, affected communities, environmental and human rights defenders, witnesses and whistle blowers, and to take appropriate action to provide remedies in case of reprisals. The new UN treaty must enforce this.

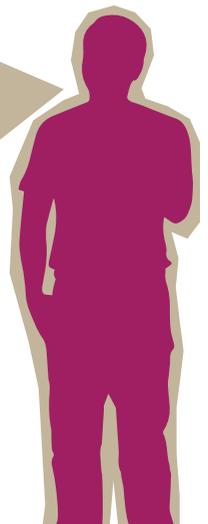


Photo: Members of the Vaal Environmental Justice Alliance (VEJA) in remembrance of those who have lost their lives at the hand of AMSA's pollution in Steel Valley



## PEOPLE'S ENVIRONMENTAL RIGHTS PREVAIL AGAINST ARCELORMITTAL IN SOUTH AFRICA

On 22 June 2015, local activist group – the Vaal Environmental Justice Alliance (VEJA) gained a victory for people's environmental rights in South Africa (SA) against the multinational steel manufacturer ArcelorMittal SA (AMSA). The group won access to AMSA's 7,000-page environmental "Master Plan". This followed a battle of more than 12 years between VEJA and the industrial polluter for access to the document.

The SCA criticised AMSA's lack of good faith in its engagement with VEJA and emphasised the importance of corporate transparency in relation to the environment. The court said its findings highlighted the "...dangers of a culture of secrecy and unresponsiveness".

### Timeline of the struggle for the Right to Know:

1994	1996	2011	2013
people bought property in a farmland area at Louisrus and Steel Valley in SA's Gauteng province, close to an Iscor steel plant (later part of AMSA).	residents complained about oil in their borehole water and chemical smells. Iscor denied responsibility. It did, however, under take studies. Its reports formed part of AMSA's "Master Plan", completed in 2003 but withheld from the public.	The Centre for Environmental Rights (CER) requested the "Master Plan" through SA's Promotion of Information Act (PAIA), but AMSA refused. CER then represented VEJA in legal action against the corporation.	SA High Court ordered AMSA to release the information. Instead, AMSA appealed to the Supreme Court of Appeal (SCA). November 2014: SCA ordered AMSA to release the "Master Plan" and to pay VEJA's legal costs.

*"It was a ground-breaking victory for communities seeking access to environmental records in the context of a bigger fight against corporations that violate South Africa's Constitution and its citizens' right to a healthy environment."* Bobby Peak, groundWork – Friends of the Earth South Africa

Photo: Victory for Women as they claim back Land from Oil Palm Plantation companies



## VICTORY FOR WOMEN AS THEY CLAIM BACK LAND FROM OIL PALM PLANTATION COMPANIES

Women mobilized against corporate land grabs for industrial tree plantations have reclaimed their lands in Edo State, Niger Delta region in south-south Nigeria.

The successful strategies of these Nigerian women at the local, national and global level, in reclaiming their land from corporations like Okomu Oil Palm Plc (Socfin Group) and Iyayi Group (rubber plantation company), was basically on their knowledge about their rights and how and why they are disproportionately affected by corporate projects in the context of the patriarchal society. And also, on their conviction that the organization of women struggles can challenge corporate power and the corporate capture of governments, policies and territories.

The struggle started in 2010 when women surrounded by "Owan and Okomu Forest Reserves" cried out for their rights to get justice, denouncing water pollution in take away of their farmlands by corporations. Their

cry was not in vain. Six years later the Nigerian government revoked 13.750 hectares of land back to their communities.were handed back to their rightful communities.<sup>6</sup>

*"African lands are been grabbed by multinational companies for large scale plantation expansion by big plantations companies, whose deals are mostly shrouded in secrecy by governments, leading to the displacement of communities, truncation of local livelihoods and food systems, biodiversity loss with differentiated impacts on women and children. Governments must therefore rise to protect the people from dangerous eco-business that threatens our environment, our forest- our life"* Rita Uwaka, Coordinator of Forest and Biodiversity Program Friends of the Earth Africa (FoEA)

Photo: UN Human Rights Council in Geneva



# TIME FOR A LEGALLY BINDING TREATY

TO GET INVOLVED AND FIND OUT MORE GO TO [TREATYMOVEMENT.COM](http://TREATYMOVEMENT.COM) & [FOEI.ORG](http://FOEI.ORG)

After decades of struggle from communities across the world, the idea of corporations being held legally responsible for their crimes no matter where they are committed is finally becoming a reality.

## On the Road to Change

1974

UN Commission on Corporations established.

1990

UN drafts TNCs code of conduct.

2003

New frustrated attempt to pass a code of conduct for TNCs at UNHRC.

2014

UN passes the treaty resolution.

2015

First IGWG meeting on binding treaty.

2016

March: IGWG Report adopted by the UNHRC.

October: Second session of the IGWG on the Binding treaty on Transnational corporations and other businesses enterprises with respect to Human Rights (in Geneva from 24 to 20 October).

JUSTICE FOR ALL

Traditionally international human rights law focuses on the role and responsibilities of states. Human rights abuses arising from the cross-border activities of corporations are responsible for the largest gap in international law. In our globalised world, companies operating between different national jurisdictions often escape accountability.

This Treaty should seek to solve existing flaws in international law regarding the responsibility of companies as well as provide necessary justice for millions of affected people. It is our task to press states to firmly commit themselves to this process and act proactively for the Treaty and in the interests of the people.

Two decades of neoliberalism has reduced the responsibility of TNCs at UN to voluntary pacts of corporate social responsibility, such as the Global Compact (2000), the Equator Principles for financial institutions (2003) and the UN Guiding Principles on Business and Human Rights (2011).

[STOPCORPORATEIMPUNITY.ORG](http://STOPCORPORATEIMPUNITY.ORG)

Don't let  
big business  
rule the world!

## PROTECTION OF EHRDS UNDER THE AFRICAN HUMAN RIGHTS CHARTER

The Center for the Environment and Development (CED), Friends of the Earth Cameroon looks at how to advance the enforcement and implementation of regional jurisdiction and the new UN Treaty in order to protect people affected by transnational corporations.

Further to the United Nations Declaration on Human Rights Defenders, the African Commission on Human and Peoples' Rights has adopted resolutions that specifically address the protection of Human Rights defenders in Africa in the context of its own charter. The Commission has produced a jurisprudence that clarifies the obligations of States in relation to the environment and its defenders.

*For example, in the case of The Centre for Minority Rights Development in Kenya and The Minority Rights Group (on behalf of Endorois Welfare Council)<sup>8</sup>, the Commission considered that the Kenyan state violated the right of the Endorois People by denying the community the right to control and use the natural resources on their traditional land as well as access to a lake which is important for the life of the community.*

According to the Commission, the state must not only act to protect its people's well being from oil companies, it must also refrain from allowing the plundering of its resources by another state, thereby preventing its own people from having access to their own resources and wealth.



**Friends of  
the Earth  
International**

[www.foei.org](http://www.foei.org)

economic  
justice  
resisting  
neoliberalism

Friends of the Earth International is the world's largest grassroots environmental network with 75 member groups and over two million members and supporters around the world.

Our vision is of a peaceful and sustainable world based on societies living in harmony with nature. We envision a society of interdependent people living in dignity, wholeness and fulfilment in which equity and human and peoples' rights are realised. This will be a society built upon peoples' sovereignty and participation.

Thank you to those that provided the images (in the order in which they appear): groundWork, Victor Barro (Amigos de la Tierra España), Environment al Rights Action, Daniel Ribeiro (Justiça Ambiental - JA!), groundWork, Stephen Omajugbo, Victor Barro, FoE International. Design: Somerset Bean and Thiago Gallas

### REFERENCES:

- 1 See new report by ERA and FoE! "Access to Environmental Justice in Nigeria: A Case for A Global Environmental Court of Justice" [www.foei.org/what-we-do/UN-treaty-on-TNCs](http://www.foei.org/what-we-do/UN-treaty-on-TNCs)
- 2 Environmental Laws of Nigeria: A Critical Review Ed. By Godwin Uyi Ojo & Jayeoba Gaskiya (2003) P. 36
- 3 For more information, see: <http://ja.org.mz/en/campaigns/coal-mining/> and <http://www.foei.org/wp-content/uploads/2012/01/Vale-Case-for-web-English.pdf>
- 4 For more information, see: <http://www.stopcorporateimpunity.org/wp-content/uploads/2016/07/Southern-Africa-Campaign-Newsletter-July-2016-1.pdf> ; <http://aidc.org.za/permanent-peoples-tribunal-jurors-report/>
- 5 In July 2010, the UN General Assembly recognized the right of every human being to have access to sufficient water for personal and domestic uses. See: [www.un.org/en/globalissues/water/](http://www.un.org/en/globalissues/water/)
- 6 <http://www.realworldradio.fm/9268-great-victory-for-women-in-nigeria>
- 7 See the statement "Stop the land bazaar! Plantations are not forests" mentioned at: <http://guardian.ng/news/conservationists-warn-against-land-grabbing-in-nigeria-by-foreign-firms/>
- 8 CADHP, November 2009, n°276/2003 at: <http://www.achpr.org/communications/decision/276.03/>

[www.foei.org](http://www.foei.org)



**Friends of  
the Earth  
International**